

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 246 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

NAVINCHANDRA MULJI MAHESHWARI

Versus

STATE OF GUJARAT

Appearance:

MR AR THACKER for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 11/08/1999

ORAL JUDGEMENT

#. Rule. Mr.Rawal, learned APP waives service of
rule for respondent State.

#. Heard Mr.Thakker, learned advocate for the petitioner
and Mr.Rawal, learned APP for the State. The petitioner
herein has aggrieved by the order passed by the learned
Chief Judicial Magistrate, Kutch at Bhuj on 3rd August,
1998 in Criminal Case No : 893/95 below Exh.28 and the

judgment and order rendered by the learned Sessions Judge in Criminal Revision Application No : 46 / 98 dated 30th January, 1999. The facts are that the present petitioner is accused No.2 in Criminal complaint before the learned Chief Judicial Magistrate. During the deposition of witnesses after cross examination of the petitioner was over, the cross examination relating to accused No.2 i.e. present respondent No.2 begun and during the cross examination of respondent No.2 witness made certain admission and produced a document which was exhibited at Exh.27. The petitioner therefore urged the learned CJM for permit to cross examination of the said witness as the production of that document would adversely affect the defence of the petitioner. Learned CJM passed the order stating that the application is partly allowed and accused No.1 present petitioner is permitted to cross examine the witnesses in respect of Exh.27. Being aggrieved by this order, the petitioner preferred revision application. The revision application came to be dismissed. The learned Sessions Judge has observed that the revision is outcome of a misunderstanding by use of word "application is partly allowed", by the learned CJM, whereas the cross examination to the written is allowed by the learned CJM and it would be open for the revisioner to cross examine the witness on basis of Exh.27.

#. Mr.Thakker has pressed into service the decision in the case of C.T. MUNIAPPAN VS. STATE OF MADRAS AIR 1961 SUPREME COURT 175. He has relied upon on para 6 which runs as under;

" The only question of law raised before the High Court was that evidence of the witness brought out in cross examination on behalf of Kumarswami could not be law be relied upon as against this appellant as the appellant had no opportunity to cross examine these witnesses again. The High Court rejected this contention. Before us it has been urged that the view taken by the High Court in this matter was wrong. it is urged that Ss.137 and 138 of the Indian Evidence Act do not contemplate any such further cross examination of a prosecution witness. There can be no doubt that each accused is entitled in law to test the evidence given against him by a prosecution witness by cross examination. Section 137 does not say that such cross examination has to be limited only to what has been stated by the prosecution witness in examination in chief. Indeed Sec.138 mentions categorically that "the

cross examination need not be confined on his examination in chief" nor is there anything to justify the conclusion that once the right of cross examination has been exercised after charge it cannot be exercised again. While it is true that Section 137 and Section 138 do not in words speak of further round of cross examination there is neither in these sections nor anywhere else in the Evidence Act anything to bar the accused from exercising his right of cross examination afresh if and when the prosecution witness makes a further statement of facts prejudicial to him."

#. He submitted that the petitioner's right to cross examine cannot be taken away or restricted by the Court if some admission or production of document by witnesses during the cross examination is likely to affect the interest of the petitioner.

#. Mr.Rawal, learned APP has objected this petition. He submitted that both the Courts below have categorically permitted cross examination of the witnesses to the petitioner. The petitioner had already cross examined the witnesses on other counts and therefore he may cross examine the witness on question relating to Exh.27.

#. Having considered the rival side contentions, it is very clear from the orders impugned herein that both Courts below have permitted cross examination to the petitioner in respect of documents produced at Exh.27 and rightly so. Further, cross examination in relation to the other questions cannot be permitted as the petitioner had right to cross examine the witnesses earlier. But any question relating to Exh.27 has to be permitted so that no prejudice may be caused to the petitioner which is in fact done by both the Courts below. Petition therefore, merits dismissal and the same is therefore dismissed. Rule discharged.

Date : 11-8-1999 [A.L.Dave, J.]

#kailash#